

TENNY JOURNAL COMMUNICATIONS
650 E. Palisades Ave #101, Englewood Cliffs, NJ 07632
Tel: (908) 360-5640 Email: ppoltd@nj.rr.com

November 25, 2018

VIA EMAIL

FEDERAL COMMUNICATIONS COMMISSION
Consumer Inquiries & Complaints Division
Consumer & Governmental Affairs Bureau
445 12th Street, S.W.
Washington DC 20554

VERIZON NEW JERSEY, INC.
540 Broad Street
Newark, NJ 07102

Re: Fiber Migration Project Introduction-NTAUG2018-T – Due Prior to 1/1/2019

Dear FCC and Verizon:

I have hastily drafted an Informal Complaint and a Certification that I am filing electronically tonight to both of you. I am serving Verizon's copy of the Complaint to Ms. Klingbail at her email address. It is the only address we have for Verizon regarding the Fiber Migration Project.

If you have any questions, or if I have not followed the Commission's protocol or the required format, please do not hesitate to let me know. I am out of the country for the holidays, but I am available by email now, and I will be available by phone after Tuesday, the 27th.

I have asked my assistant, Molly Marcus, to take your calls if you need information before I return. She can be reached at (818) 606-3731 or by email at mmarcus1@att.net.

Thank you for your consideration in this matter.

Sincerely,

John Cory



**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
INFORMAL COMPLAINT**

VIA ELECTRONIC SUBMISSION

**Federal Communications Commission
Verizon New Jersey, Inc.**

Complainants	TENNY JOURNAL COMMUNICATIONS (“Tenny Journal”)
Competitive Local	650 E. Palisades Ave. #101
Exchange Carrier	Englewood Cliffs, NJ 07632
	Tel: (908) 360-5640
	Email: ppoltd@nj.rr.com

Incumbent Local	VERIZON NEW JERSEY, INC. (“Verizon”)
Exchange Carrier	540 Broad Street
	Newark, Nj 07102
	Tel: (973) 649-9900
	Email: kimberly.r.klingbail@verizon.com

Incumbent Local	VERIZON COMMUNICATIONS, INC.
Exchange Carrier	1300 I Street NW, Suite 400 West
	Washington, DC 20005
	(202) 515-2540

Reference:	FIBER MIGRATION NETWORK TRANSFORMATION PROJECT-NTAUG2018-T – Due Prior to 1/1/2019
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I. Introduction

1. Tenny Journal Communications, Inc. (Tenny Journal”) received an email from Kimberly R. Klingbail, Verizon Partner Solutions, on November 20, 2018 notifying Tenny Journal of Verizon’s intention to retire copper lines and migrate to fiber lines in areas of New Jersey where Tenny Journal has payphones. According to Ms. Klingbail’s email, Verizon notified Tenny Journal on August 18, 2018 of its plans to retire the copper lines and set November 25, 2018 as the deadline to object. However, Tenny Journal did not receive this notice. Despite Tenny Journal’s notifying Verizon of the change in contact information, Verizon sent the Notice by email to the personal email address of a former employee, Tracy MacDonald, and it was not forwarded to Tenny Journal until yesterday. Tenny Journal

vigorously objects to the retirement of copper lines in New Jersey. Had Tenny Journal received notice in August, it would have immediately filed objections.

2. Any inquiries regarding this Informal Complaint should be directed to:

John Cory
650 E. Palisades Ave. #101
Englewood Cliffs, NJ 07632 Tel: (908) 360-5640
Email: ppoltd@nj.rr.com

II. Background

3. Tenny Journal is a small payphone company, a CLEC, and a carrier customer of Verizon. Tenny Journal's customers are individuals and businesses that use coin operated pay telephones. Tenny Journal owns and operates 700 payphones in New Jersey. Tenny Journal's payphones connect to an existing analog telephone infrastructure to provide telephone service on a pay-per-use basis. The older analog technology that the payphones use requires sending an electric current to the phones to enable them to function. The phones must be called every day to charge the phones' batteries and check on the phone's operations. The electric current can only be transmitted over copper lines. With fiber lines, Tenny Journal's existing master computer cannot call and connect with the payphones in the field daily to exchange data and check on the phones' operation.

4. No alternative infrastructure or carrier is available. If there is no available alternative, and the copper lines are removed, Tenny Journal's ability to provide telephone service is totally and permanently suspended. It is out of business.

5. Tenny Journal's customers primarily come from the 1% of the population who do not have either a cell phone or a landline. According to the U.S. Census Bureau, that represents over 3.5 million households in the United States. Residents of those households rely on payphones and when possible borrowing a cellphone. The payphones are in lower income areas of New Jersey's cities and rural areas where payphones provide an essential, life-saving service. These individuals cannot afford to buy a cell phone or pay a monthly cell phone charge, and many do not want a land line or cannot afford a land line. They simply want the ability to make calls when it's necessary.

6. Verizon New Jersey, Inc., is a wholly owned subsidiary of Verizon Communications Inc., a broadband and telecommunications company, and the largest U.S. wireless communications service provider. Verizon New Jersey was formerly New Jersey Bell Telephone Company. In 2000 after the Bell Atlantic - GTE merger, the corporation changed its name to Verizon and the company changed its name to Verizon New Jersey. It provides wireline telecommunication services to a territory consisting of local access and transport areas in New Jersey. It offers exchange telecommunication service, switched and special access services, local residential and business services, local private line voice and data services, and fiber-to-the-premises services under the FiOS service brand.

II. Statement of Facts

A. The Discontinuance of Plain-Old-Telephone-Service Triggers 47 U.S.C. § 214(a)

7. In relevant part, 47 U.S.C. § 214(a) provides that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”

8. The Federal Communication Commission (the “Commission”) in its Report and Order and Declaratory Ruling, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, (“Wireline Deployment Order,”) concluded “a carrier’s tariff or contract with its customer determines the scope of a ‘service’ for purposes of the section 214(a) discontinuance requirement”¹ “We find that a carrier’s description in its tariff—or customer service agreement in the absence of a tariff—is dispositive of what comprises the “service” being offered by that carrier for purposes of determining whether section 214(a) discontinuance authority is required.”² Thus, the terms of a carrier’s service agreement with a customer define its obligations to that customer and vice versa.³

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC 11128, 11177 & n.425 (Rel. Nov. 29, 2017). (“Wireline Deployment Order,”) 32 FCC Rcd at 11177 ¶ 130.

² Wireline Deployment Order” at ¶ 127.

³ Id. at ¶ 143.

9. The current Commission reversed the “functional test” standard adopted by the previous Commission in 2014 for determining whether a service is being discontinued, reduced or impaired pursuant to 214(a) authority.”⁴

10. Rates for ‘Pay Telephone Service’ are set out in Verizon’s Product Guide and Tenny Journal’s discounts are noted in the contract or Interconnection Agreement (ICA) between Verizon and Tenny Journal. According to the Interconnection Agreement, the “service” Verizon contracted to provide to Tenny Journal was plain-old-telephone-service (“POTS”). It is the only service Verizon agreed to provide Tenny Journal and the only service Tenny Journal agreed to purchase. Tenny Journal’s payphones are “smart” payphones that contain all the equipment in the phone needed to set up the call. In New Jersey, Verizon refers to them as Customer Provided Pay Telephones.

11. Tenny Journal only sends 911 and toll free traffic to Verizon. All other traffic is sent to Tenny Journal’s VOIP provider or its Operator Services or Directory Assistance Provider. Verizon does not provide Operator Services, Information Services, Directory Services, FUSF or its Tax Services. Tenny Journal files its own 499 for FUSF compliance, and Tenny Journal is a tax-exempt reseller. The services stated in the Interconnection Agreement between Verizon and Tenny Journal are also stated in Verizon’s NJ Product Guide, Part A, section 4.5.1, “Customer Provided Pay Telephone Service” (CPPTS).

12. The terms of the ICA are specific, unambiguous, and undisputed. Verizon agreed that the service it would provide to Tenny Journal was POTS. According to the Commission, the service described in the ICA is dispositive of what comprises the “service” being offered by a carrier for purposes of determining whether section 214(a) discontinuance authority is required. In other words, since POTS is the service described in the contract between Verizon and Tenny Journal and Verizon discontinues, reduces, or impairs POTS, it triggers the discontinuance requirements of Section 214(a).

⁴ See Technology Transitions et al., GN Docket No. 13-5 et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 15015-18, paras. 114-19 (2014) (2014 Technology Transitions NPRM and Declaratory Ruling).

13. So there is no misunderstanding: The contract between Verizon and Tenny Journal guarantees that the “service” Verizon will provide is plain-old-telephone-service.⁵ If Verizon discontinues and/or impairs the copper lines to Tenny Journal’s payphones, it discontinues and/or impairs POTs which by the terms of its Interconnection Agreement with Tenny Journal and its tariff requires it to provide. If Verizon does not provide plain-old-telephone-service, Verizon is discontinuing the “service” specified in the ICA. Discontinuing the service specified in the contract between Verizon and Tenny Journal triggers section 214(a) authority and requires adequate notice and prior permission from the Commission as well as an objective analysis of the parties’ contract based on traditional principals of contract law.

14. By any rule of contract construction and interpretation, if Verizon removes, discontinues or impairs the copper lines to Tenny Journal’s payphones, it discontinues plain-old-telephone-service, and Verizon has breached its contract with Tenny Journal. When it fails to provide POTS, Section 214(a) requires a pre-approval certification by the Commission and an analysis that includes full consideration of the specific terms and conditions of the companies’ contract. The Commission even admonished carriers that “whether a section 214(a) approval is required or not—is not an excuse for abrogating contracts, including contract-tariffs.”⁶

15. In sum, the evidence of record more than satisfies any standard deemed necessary to prove as a matter of law, that if Verizon suspends POTS, the “service” it contracted to provide Tenny Journal, section 214(a) authority applies. Verizon contends that its notice to Tenny Journal regarding the copper removal fully complied with applicable rules for retiring copper and migrating to fiber facilities.

16. While one would not expect Verizon to say otherwise, Tenny Journal most certainly disputes that Verizon acted lawfully and in compliance with the FCC’s orders. Verizon claimed to have complied with the network change disclosures of 47 CFR §§ 51.325-51.333. But Verizon’s actions involves more than a network change or transformation; it involves a discontinuance,

⁵ Tenny Journal will provide relevant portions of the Product Guide.

⁶ Id. at ¶ 121.

reduction and total impairment of services⁷ in areas where 911 and emergency access are only available from payphones or when a cell phone can be borrowed. The controlling authority is not 47 CFR §§ 51.325-51.333. The controlling authority is 47 U.S.C. § 214(a).

17. Verizon's Notice and Application to the Commission utterly disregarded the applicable statutory standards. Verizon is discontinuing the copper lines to Tenny Journal's phones knowing it is completely suspending service, knowing the analog payphones cannot and will not work with fiber lines, and knowing for those people relying on payphones there is no available alternative, or substitute from another carrier.

18. At no point after sending its application for removal of the copper lines and its notice to Tenny Journal did Verizon consider that fiber lines were not interoperable with key applications and functionalities of Tri-State's payphones.⁸ As could be expected, Verizon also avoided the fact that fiber lines were totally inoperable with the network infrastructure currently in place for payphones, and that critical applications such as 911, network security, and applications for individuals with disabilities would be suspended and unavailable to a large segment of society.

19. In short, Verizon totally ignored 47 CFR § 63.602(b) and any of the additional requirements initiated by the Commission when a technology transition discontinues an existing retail service. Verizon expected its application to retire copper would be automatically granted based solely on its characterization of disputed facts without any consideration of the role of evidence or burden of proof.

20. In its application to the Commission, Verizon represented that it was a "Network Transformation" project, not a disconnection of service project. Verizon has a legal (and moral) obligation to certify truthfully and accurately to the Commission and not omit material information that would prevent its statements from being incorrect, or misleading.⁹ Verizon did not certify truthfully to the Commission and it is breaching its contract with Tenny Journal. Apparently

⁷ For convenience, the term "discontinue" or "discontinuance" will be used as a shorthand for the statutory language "discontinue, reduce, or impair."

⁸ See, 2016 Technology Transitions Order, 31 FCC Rcd at 8305, para. 65.

⁹ See 47 CFR 1.17(a)(1)(2)

Verizon thinks it can break the law without consequences. It cannot. Verizon will be fully liable for all damages to Tenny Journal. That's what the courts are going to conclude.

21. Verizon was obligated pursuant to 47 U.S.C. § 416(c) to comply with the procedural and administrative Orders of the Commission. This would entail following the Commission's directions and truthfully certifying to the FCC that the "network change" required a disconnection of service and that no other alternative and no other carrier was available.¹⁰ In light of the strict rules applicable to such orders, the fact that Verizon did not comply with the FCC's orders reflects Verizon's intentions and provides direct evidence that Verizon provided a knowingly false certification to the FCC and should not be allowed to self-certify in the future.

B. A Cost Benefit Analysis Will Confirm Verizon Has No Intention of Replacing the Copper Lines With Fiber in Areas Where the Payphones are Located

22. If Verizon removes the copper lines to Tenny Journal's payphones, to save its business, Tenny Journal would be forced to try to run electrical lines and install a meter for each commercial building where a payphone is located. Tenny Journal's phones are not in homes; they are in commercial buildings. Tenny Journal would have to obtain permission from each commercial establishment, and these businesses are very reluctant to allow an outside company to attach electric lines and set up a meter on their building. Almost none will allow it. Most don't want the electricity or the meter. They have nothing to gain.

23. The copper infrastructure, however, is in place now; it is established, and it works. To run electrical lines to each payphone, it would cost Tenny Journal \$3,000 to \$5,000 for each of the 700 phones, in addition to obtaining and installing an electric meter, and paying the labor costs to connect it. That's if the businesses would allow it, and it were economically feasible, which it is not. However, the cost to Verizon to retain the copper lines until fiber can be replaced is negligible. Where a business and its consumers depend upon the service offered by Verizon, there should be a public process to evaluate a proposed discontinuance of that service before it happens.

¹⁰ 47 U.S.C. § 416 Orders of Commission, (c). Compliance; "It shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect."

24. Low income areas of cities and rural areas where Verizon has not installed fiber (or any functionally comparable platform) and also has not committed to deploying fiber services, payphones will continue to provide the only means of communication for many of those residents. The residents of those communities cannot afford broadband or cell phones. Therefore, it is not profitable for Verizon to replace the copper lines with fiber in those areas.

25. Similarly, in those areas, that are out of cell tower range where wireless service is unavailable or unreliable due to challenging terrain, forest, weather, network changes, buildings, signal strength, customer equipment, and other factors, the cost to Verizon to remove the copper lines and replace them with fiber is enormous, and the potential profit is zero to none. Payphones, on the other hand, are critical to the public safety and welfare in those areas, which will almost certainly be threatened if payphones are not available.

26. Even a rudimentary cost benefit analysis makes clear that Verizon will not extend funds to migrate to fiber in these areas until it has been successful in more profitable areas where the environment presents fewer challenges and the communities can afford cell phones and broadband. Therefore, it seems only reasonable to leave the copper lines in place until they can be reliably replaced which will be 15 to 20 years in the areas where Tenny Journal has its payphones.

1. Tenny Journal's Demands are Just, Reasonable, and Economically Feasible

27. Tenny Journal advised its community of customers of the potential change in payphone service. In response, numerous customers reported to Tenny Journal that they rely totally on payphones, that they cannot afford a cell phone. Contrary to some of the available reports, the cost to Verizon to allow the copper lines to remain until the fiber lines are deployed is insignificant. For example, should Verizon temporarily postpone the retirement of copper for 10 years in some of the poorer areas of the cities or in rural areas, it will not result in an exorbitant maintenance cost for Verizon, in fact, the cost would be imperceptible.

28. Verizon has roughly 50 million phones with copper lines in its training areas. The majority of those phones use copper lines and the phones in other areas of the state will not be transferred to FiOS for probably 15 to 20 years. It is only reasonable that the copper lines that

serve payphone CLECs should be allowed to remain in service for as long as possible, or certainly as long as Verizon's own copper lines are in place.

2. Maintenance and Labor Costs to Temporarily Retain the Copper lines are Negligible

29. The copper wire infrastructure is already in place and working. Tenny Journal employs its own repair teams that have worked hand-in-hand with Verizon for many years. In those areas where Verizon has not deployed fiber and has no plans to deploy fiber, courts have been rightly hesitant to grant a request to discontinue service without a backup, or replacement where people are left without access to emergency service. This is exactly what Verizon did in Maryland and Virginia. As providers, Tenny Journal and Verizon continue to have obligations to comply with 911 service requirements regardless of the technology. In addition, all voice services remain subject to requirements that they support access by people with disabilities, regardless of technology.

30. Tenny Journal asks the Commission to take a second look at the payphones and 911 service being disconnected in those areas of the cities and rural areas where Tenny Journal provides service. These are areas where Verizon has no intention of deploying fiber in the next 15 or 20 years. Until Verizon can ensure that people in those areas have cell phones or landlines for access to emergency service, in the interest of justice and public safety those lines should not, and cannot, be discontinued.

31. Verizon is taking away dependable emergency service without ensuring that a reliable backup system replaces it. The facts speak volumes as to the factual evidence, and Verizon's credibility with regard to its compliance with governing law and FCC regulations. The only thing that is certain is if Verizon is allowed to take away payphones and emergency communications without replacing it with a reliable emergency backup system thousands of lives are potentially in danger. Verizon cannot disregard its obligations to ensure that an emergency backup system is available for some of the country's most vulnerable. A successful backup system must be available and active to support emergency communications if primary capabilities become unavailable.

C. Payphones Provide a Necessary Service for People Living in Lower Economic and Rural Areas.

32. For people living in the lower income and rural areas like those served by Tenny Journal, payphones provide an essential, life-saving service. These individuals cannot afford to buy a cell phone or pay a monthly cell phone charge, and many do not want, or cannot, afford a land line. They simply want the ability to make calls when it's necessary. And when they want to make a call they prefer to go to a payphone at the corner service station and pay 50¢. In these areas, replacing the existing service with a newer, "better" service that users cannot afford to buy is not a step forward.

33. Many of these individuals also do not want broadband, or streaming. They want only plain old telephone service. For them, it will not be an issue of equivalent quality of service if the payphones and copper lines are removed, it will mean no service at all. For payphone users, the majority of whom are people of color, wireless replacement services are not affordable, and if those individuals cannot afford to replace the payphones they rely on, they will have no service at all. They will lose access to essential communications service and the concomitant ability to contact first responders. Thus, the higher cost and unaffordability of replacement services will have a severe, disparate, and discriminatory impact on people of color in lower-income communities.

34. Discrimination and systemic racism in the telecommunications sector (including lack of affordability) and the credit industry have significantly contributed to the digital divide. The divide between the "haves" and the "have nots" that the Commission sought to end. However, Verizon's actions have, and will continue to have, the opposite effect from the one the Commission envisioned, unless it is stopped. There is no reason that people of color should have inferior access to emergency services.

35. It is difficult to see how eliminating copper lines will somehow better connect the people that Tenny Journal serves to broadband. To be clear, this is a major public policy concern. But it's absurd to think that kicking out payphones will somehow create enough incentive for Verizon to deploy fiber in areas they have determined are low-priority. Eliminating CLEC

payphone providers will not create a new opportunity or support a mechanism that is unavailable to wireline carriers today. Hastening the decline of pay phones will also not result in Verizon more quickly upgrading its DSL facilities to fiber in poor, unprofitable areas.

36. Certainly, the permanent disconnection of service that essentially shuts off emergency communication is not in the public's interest, and it makes those in lower income areas more reliant on the government for medical care, food, and other physical necessities. The situation is that when a telecom carrier like Verizon discontinues wholesale service to Tenny Journal, where Verizon holds a monopoly position as it does in New Jersey, Tenny Journal cannot obtain wholesale service from another provider. It is impossible, and Tenny Journal has no choice but to discontinue service to its end users, effectively resulting in a downstream discontinuance of retail service and emergency service.

37. How can the situation described be considered "just and reasonable" as required by 47 U.S.C. §201(b). Verizon's actions are neither just nor reasonable. They are in violation of Section 201(b) of the Communications Act, and they have resulted in violations of Section 51.325(a)(4) of the Commission's rules. Not only are Verizon's actions unjust and unreasonable, they are unlawful. Section 201(b) provide in addition that "all charges [and] practices . . . that are unjust or unreasonable are declared to be unlawful." ¹¹

B. Verizon's Monopoly has Decimated Telecom CLECS in New Jersey

38. Verizon enjoys a monopoly position in New Jersey. Because Verizon FIOS was exempt from sharing requirements, the result is that fewer and fewer CLECS exist, and there is less and less competition. Currently, Tri-State and other CLECs have an established discount pricing schedule that enables CLECs to compete. Due to Verizon's resentment towards CLECs, fewer CLECs are able to compete and even fewer will be able to enter the market.

39. Tenny Journal is one of the few CLECs remaining and one of even fewer payphone companies. Tenny Journal must rely on its sharing agreement with Verizon. If Verizon cuts off any CLEC's access to the infrastructure and there is not an interoperable

¹¹ 47 U.S.C. § 201(b)

alternative, it cuts off a competitor. As repeated throughout this Complaint, Tenny Journal's existence depends on its access to the copper infrastructure. It is Tenny Journal's only means of staying in business; its only means of competing. For Verizon to discontinue service to a minority-owned business like Tenny Journal when it would not be deploying a fiber replacement for many years, if at all, is clearly unreasonable and violates section 201(b).

40. Neither a good nor rational reason exists that people of color should be disadvantaged when the copper lines can remain without effort, and with minimal cost and inconvenience to Verizon. Increasing the number of people whose income is below the federal poverty line creates an enormous burden for the government. The Commission hoped to prevent just this type of blow-back. Tenny Journal has personal knowledge of its customers, and its customers deserved a 47 U.S.C. § 214(a) analysis. Verizon did not follow the Commission's orders, and it should not be allowed to utterly disregard the applicable statutory standards without consequences.

41. Clearly, the number of payphones in service in the U.S. has declined precipitously during the last decade, and they will continue to decrease. Digital and broadband are the future. Payphones no longer play the role they once did. In 2018, approximately 150,000 payphones still existed in the U.S.¹² Surprisingly, while payphones are decreasing, the share of households living without telephone service, wireless or landline, has increased significantly over the past three years, from 2.6 percent in the first half of 2014 to 3.9 percent in the first half of 2017.¹³

42. If someone doesn't have a phone, the only place they can make a call is a payphone. According to Frontier Communications, pay phones facilitated 3,500 free calls to 411 and 911 last year, and the company says those calls are on track to top 5,200 this year.¹⁴ Importantly, while payphones are vanishing, so is a lifeline for the poor.

III. CONCLUSION

43. As shown above, there are innumerable disputes as to the factual evidence and

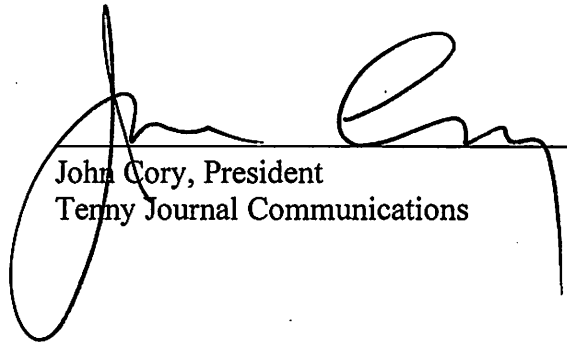
¹² CNN Money report, 2018.

¹³ AARP.org, January 10, 2018

¹⁴ USA Today, Dec. 13, 2017

the credibility of Verizon's evidence. The Commission should decide the rest.

Dated: 11/25/18.


John Cory, President
Terry Journal Communications

CERTIFICATION OF JOHN CORY

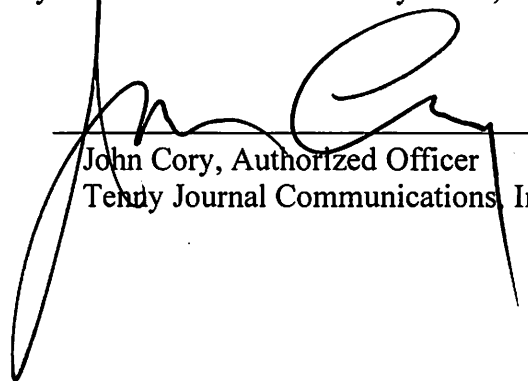
I, John Cory, of full age, being duly sworn, make this affidavit and state as follows:

1. I am an officer of Tenny Journal Communications, Inc. ("Tenny Journal") and I am authorized to act in this matter to oppose the removal of copper lines from the payphones that Tenny Journal owns and operates in New Jersey.

2. I submit this Certification from my personal knowledge that the facts stated in the Informal Complaint Tenny Journal filed against Verizon New Jersey, Inc. and Verizon Communications, Inc. are true.

3. I further certify that if any statement is intentionally false, I am subject to punishment.

Dated: 11/28/18.



John Cory, Authorized Officer
Tenny Journal Communications, Inc.